

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Michael Argentieri, *Pro Se*,

Plaintiff,

v.

Civil Action No. 1:20-cv-00806

Hon. Lawrence J. Vilardo

Town of Evans (Municipality);
Town of Evans Supervisor Mary Hosler;
Town of Evans Director of Planning and Development
and Agricultural Board Ex-Officio Will Smith (Bill);
Town of Evans Councilwoman Jeane Macko;
Town of Evans Councilman & Agricultural Board
Liaison Mike Schraft;
Jeneen Hill Code Enforcement & Agricultural Board
Ex-Officio;
Vicky Kurek, Agricultural Board Member, Individually
and in their Official Capacities,

Defendants.

**DECLARATION OF HENRY A. ZOMERFELD, ESQ. IN
SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

HENRY A. ZOMERFELD, pursuant to 28 U.S.C. § 1746, states and declares
under penalty of perjury that the following is true and correct:

1. I am an attorney duly licensed to practice in courts of the State of New York and in the United States District Court for the Western District of New York. I am a senior associate at Hodgson Russ LLP, attorneys for Defendants in this action. I am therefore fully familiar with the facts and circumstances of this matter.

2. I submit this declaration in support of Defendants' motion to dismiss Plaintiff's Complaint.

3. By way of background, the lawsuit concerns the Town of Evans' Local Law No. 7 of 2019 (the "Local Law").

4. Attached as **Exhibit A** is the public hearing notice for the Local Law.

5. On July 10, 2019, the Town Planning Board held a meeting to discuss, among other things, the proposed Local Law. A copy of the minutes from this meeting are attached as **Exhibit B**. Defendants Smith and Hill attended this meeting. Plaintiff also attended this meeting and spoke on the proposed Local Law. *See* Ex. B at 19-22. Plaintiff noted that he appreciated the efforts being put into the proposed Local Law. *Id.* at 22

6. On July 17, 2019, the Town Board held a meeting where it opened a public hearing on the proposed Local Law. A copy of the minutes from this meeting are attached as **Exhibit C**. Plaintiff was one of several individuals to speak at the public hearing. Of the five individuals to speak, he was the only one to *support* the enactment of the proposed Local Law. *See* Ex. C at 161.

7. Though supporting the Local Law at the meeting, Plaintiff challenged it in state court, and now brings a § 1983 action concerning the Local Law.

8. Attached as **Exhibit D** is the Local Law as enacted.

9. Attached as **Exhibit E** are a copy of Plaintiff's Notice of Petition and Petition for the Civil Practice Law and Rules Article 78 special proceeding brought in New York State Supreme Court.

10. Attached as **Exhibit F** are the Town's opposition papers to Plaintiff's Petition.

11. Attached as **Exhibit G** is the Affidavit of Bill Smith in opposition to Plaintiff's Petition.

12. Attached as **Exhibit H** are Plaintiff's reply papers concerning his state court lawsuit.

13. Attached as **Exhibit I** is a copy of the Order and Judgment dismissing Plaintiff's Article 78 Petition.

14. Plaintiff did not appeal the dismissal.

15. Instead, though untimely, Plaintiff later sought to reargue. Attached as **Exhibit J** is a copy of Plaintiff's motion to reargue the dismissal in state court.

16. Attached as **Exhibit K** are a copy of the Town's opposition papers to Plaintiff's motion to reargue contending, among other things, that the motion as untimely.

17. Attached as **Exhibit L** are a copy of Plaintiff's reply papers concerning his motion to reargue.

18. Attached as **Exhibit M** is a copy of the Order denying Plaintiff's motion to reargue as untimely.

19. Collectively, these submissions confirm the arguments raised, considered, and decided in the state court proceeding. This includes addressing Plaintiff's unfounded arguments concerning the submission of the proposed order related to the dismissal in state court, which he raised in his motion to reargue and again in this action.

20. Attached as **Exhibit N** are a copy of the Summons and Complaint in this action.

21. Attached as **Exhibit O** is a copy of the text order so ordering the parties' stipulation to extend Defendants' time to respond to this action.

DATED: September 22, 2022
Buffalo, New York

/s/ Henry A. Zomerfeld
Henry A. Zomerfeld